Assembly Bill No. 1628

Passed the Assembly September 9, 2003

_____

Chief Clerk of the Assembly

Passed the Senate September 4, 2003

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of

_____, 2003, at _____ o'clock __M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1371.4 of, and to add Section 1262.8 to, the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1628, Frommer. Health care.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, regulates and licenses health care service plans by the Department of Managed Health Care and makes the willful violation of the act a crime. The act authorizes a health care service plan to require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

This bill would require a noncontracting hospital to contact an enrollee's health care service plan to obtain the enrollee's medical record information prior to admitting the enrollee as an inpatient for poststabilization care, transferring an enrollee to a noncontracting hospital for poststabilization care, or prior to providing poststabilization care to an enrollee admitted for medically necessary care, under specified conditions. The bill would impose specified duties on a health care service plan after being contacted by a hospital under these circumstances and would require the plan in designated situations to reimburse the hospital for poststabilization care rendered to an enrollee. The bill would require a noncontracting hospital that admits an enrollee who is not stabilized to contact the enrollee's health care service plan as soon as reasonably possible after the condition is stabilized. The bill would prohibit a hospital that is required to contact the patient's health care service plan, and fails to do so, from billing the patient for poststabilization care.

Because a violation of certain provisions of the bill would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) It is the intent of the Legislature in enacting this act to protect patients with health benefits coverage from being billed in the event of a dispute between a hospital and a health care service plan, where the hospital has not contacted the health care service plan to access a patient's medical record and the health care service plan makes the record available.

(b) It is not the Legislature's intent to change the existing law concerning the duties of a hospital or physician and surgeon to a patient who presents in an emergency department of a licensed hospital.

(c) It is not the Legislature's intent to change existing law concerning the responsibilities that a health care service plan and an emergency health care provider, including a hospital, have in relation to each other, including the duty to reimburse for services provided.

(d) It is not the Legislature's intent to impair the ability of emergency physicians to provide emergency services and prompt care in accordance with the medical needs of their patients.

SEC. 2. Section 1262.8 is added to the Health and Safety Code, to read:

1262.8. (a) A hospital shall contact an enrollee's health care service plan to obtain the enrollee's medical record information prior to admitting the enrollee for poststabilization care as an inpatient, or prior to transferring the enrollee for poststabilization care to a noncontracting hospital, or prior to providing poststabilization care to an enrollee who was admitted to a noncontracting hospital for medically necessary care prior to stabilization of an emergency medical condition, if all of the following apply:

(1) The hospital is able to obtain the name of the enrollee's health care service plan.

(2) The hospital is a noncontracting California hospital with a noncontracting physician and surgeon who wants to do any of the following:

(A) Admit the enrollee as an inpatient in a noncontracting hospital for poststabilization care following the provision of emergency services and care.

(B) Transfer the enrollee to a noncontracting hospital for poststabilization care following the provision of emergency services and care.

(C) Provide poststabilization care to an enrollee who was admitted to a noncontracting hospital for medically necessary care prior to stabilization of an emergency medical condition.

(3) The health care service plan has a physician and surgeon who is regularly assigned to provide emergency services and care in a basic or comprehensive emergency department, who is available within 30 minutes of the time the hospital contacts the health care service plan by telephone, and who has all of the following:

(A) Has immediate access to the enrollee's medical records.

(B) Has the ability to promptly discuss the enrollee's records with the noncontracting physician and surgeon or appropriate hospital representative, if the noncontracting physician and surgeon or appropriate hospital representative requests that discussion.

(C) Has the ability to transmit the appropriate portion of the records requested by the noncontracting physician and surgeon or appropriate hospital representative to the hospital via facsimile transmission or electronic mail in a manner that complies with all legal requirements to protect the enrollee's privacy.

(4) The health care service plan can provide authorization for poststabilization care and provide information concerning cost sharing that the noncontracting hospital may charge the enrollee under the enrollee's coverage.

(b) A hospital required to contact an enrollee's health care service plan pursuant to this section shall do so as soon as reasonably possible, but not until the enrollee's medical condition is stabilized, as determined by the noncontracting physician and surgeon at the time the emergency services and care are rendered.

(c) If a hospital required to contact an enrollee's health care service plan pursuant to this section fails to do so, the hospital shall not bill the enrollee for poststabilization care.

(d) Subdivisions (a), (b), and (c) do not apply to a physician and surgeon providing medical services at the hospital.

(e) For purposes of this section, a representative of the hospital or noncontracting physician and surgeon is not required to make more than one telephone call to the number provided in advance

by the health care service plan. The representative of the hospital who makes the telephone call may be, but is not required to be, a physician and surgeon.

(f) For purposes of this section, ''poststabilization care'' means necessary medical care following stabilization of an emergency medical condition.

SEC. 3. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Managed Health Care shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Managed Health Care shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction of this section.

(j) (1) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 and that is contacted by a hospital pursuant to Section 1262.8 shall, within 30 minutes of the time the hospital makes the initial telephone call requesting information, do all of the following:

(A) Discuss the enrollee's medical record with the noncontracting physician and surgeon or an appropriate representative of the hospital.

(B) Transmit any appropriate portion of the enrollee's medical record requested by the appropriate hospital representative or the noncontracting physician and surgeon to the hospital by facsimile transmission or electronic mail, whichever method is requested by the appropriate hospital representative or the noncontracting physician and surgeon. The health care service plan shall transmit the record in a manner that complies with all legal requirements to protect the enrollee's privacy.

(C) Either authorize poststabilization care or inform the hospital that it will arrange for the prompt transfer of the enrollee to another hospital.

(2) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 and that is contacted by a hospital pursuant to Section 1262.8 shall reimburse the hospital for poststabilization care rendered to the enrollee if any of the following occur:

(A) The health care service plan authorizes the hospital to provide poststabilization care.

(B) The health care service plan does not respond to the hospital's initial contact or does not make a decision regarding whether to authorize poststabilization care or to promptly transfer the enrollee within the timeframe set forth in paragraph (1).

(C) There is an unreasonable delay in the transfer of the enrollee, and the noncontracting physician and surgeon determines that the enrollee requires poststabilization care.

(3) Paragraphs (1) and (2) do not apply to a physician and surgeon who provides medical services at the hospital.

(4) A health care service plan that meets the criteria set forth in paragraphs (3) and (4) of subdivision (a) of Section 1262.8 shall not require a hospital representative or a noncontracting physician and surgeon to make more than one telephone call pursuant to Section 1262.8 to the number provided in advance by the health

care service plan. The representative of the hospital that makes the telephone call may be, but is not required to be, a physician and surgeon.

(5) An enrollee who is billed by a hospital in violation of Section 1262.8 may report receipt of the bill to the health care service plan and the department. The department shall forward that report to the State Department of Health Services.

(6) For purposes of this section, ''poststabilization care'' means medically necessary care following stabilization of an emergency medical condition.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2003

_____

Governor